

Michigan Law Review

Volume 72 | Issue 1

1973

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Michigan Law Review

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Recommended Citation

Michigan Law Review, *Conflicts Between Treaties and Subsequently Enacted Statutes in Belgium: Etat Belge v. S.A. "Fromagerie Franco-Suisse Le Ski"*, 72 MICH. L. REV. 118 (1973).

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**Conflicts Between Treaties and Subsequently Enacted
Statutes in Belgium: *Etat Belge v. S.A. "Fromagerie
Franco-Suisse Le Ski"***

In *Etat Belge v. S.A. "Fromagerie Franco-Suisse Le Ski,"*¹ the Supreme Court of Belgium was faced with a conflict between a provision of the European Economic Community (EEC) treaty and a domestic law enacted subsequent to Belgian ratification of the treaty. The traditional approach in Belgium—and, incidentally, the rule in the United States²—had been to give effect to whichever was enacted later in time. Although not stated explicitly in any constitutional provision, this rule had been well settled in Belgium.³

In *Fromagerie*, the plaintiff corporation sought to recover certain taxes that it had paid to the Belgian government in order to obtain the right to import dairy products into Belgium from the other member states of the EEC. The taxes were levied pursuant to several royal decrees issued after January 1, 1958, the date on which the EEC treaty came into effect. In 1964, the European Court of Justice, which interprets the EEC treaty, held the Belgian taxes to be in violation of article 12,⁴ which provides that member states are to refrain from introducing between themselves any new customs duties, or charges with an equivalent effect, on imports or exports and to refrain from increasing existing charges.⁵

After the European Court's decision, the royal decrees were abrogated. This abrogation, however, was without retroactive effect, and, in addition, a law of March 19, 1968, provided that all payments made pursuant to the decrees prior to their repeal were irrevocable; this law further stated that those who made the payments could not seek a refund before any authority.⁶

The trial court at Brussels held that the 1968 law should prevail

1. [1971] *Journal des Tribunaux* 460, 2 CCH COMM. MKT. REP. ¶ 8141 (Cour de Cassation, 1^{re} Chambre, Belg. 1971).

2. By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either; but if the two are inconsistent, the last one in date will control the other, provided always the stipulation of the treaty on the subject is self-executing. *Whitney v. Robertson*, 124 U.S. 190, 194 (1888). See generally L. HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 163-64 (1972).

3. See M. Waelbroeck, *TRAITÉS INTERNATIONAUX ET JURISDICTIONS INTERNES DANS LES PAYS DU MARCHÉ COMMUN* 271 (1969).

4. *Commission of the EEC v. Grand Duchy of Luxembourg & Kingdom of Belgium*, 10 Requeil 1217, [1961-1966 Court Decisions Transfer Binder] CCH COMM. MKT. REP. ¶ 8028 (Ct. of Justice of the European Communities, Nov. 13, 1964).

5. Treaty Establishing the European Economic Community, done March 25, 1957, art. 12, 298 U.N.T.S. 19.

6. Law of March 19, 1968, [1968] *Recueil des Lois et Arrêts* 1162 (Belg.).

and denied the plaintiff recovery.⁷ On appeal, this judgment was reversed.⁸ The Belgian government appealed to the Supreme Court, which affirmed the judgment of the court of appeals and ordered the refund of the taxes.

Established Belgian law would seem to have required a holding that the law of March 19, 1968, was superior to any provision of the 1958 EEC treaty. Two concepts underlie this conclusion.⁹ First, an international treaty that is approved by both houses of the legislature is, through that approval, assimilated into the law and thereby made the equivalent of a national law.¹⁰ The concept of equivalence enables courts to assert jurisdiction over controversies involving treaties, for, jurisdictionally, Belgian courts can only review violations of Belgian law. It also permits judicial rather than executive interpretation of treaties. In contrast, the concept of equivalence is foreign to the French and Dutch systems, in which treaties are superior to laws.¹¹ In France, for example, interpretations of treaties by the executive are binding on the courts.¹²

Second, article 107 of the Belgian Constitution states that "[t]he courts and tribunals shall apply executive decrees and ordinances, whether general, provincial, or local, only so far as they conform to the laws."¹³ This article has been construed as excluding judicial review of the constitutionality of laws;¹⁴ there is traditionally no judicial review of legislative acts under the Belgian scheme of separation of powers.

These two concepts would seem to require the superiority of a subsequent national law over a conflicting treaty provision. First,

7. See Salmon, *Le conflit entre le traité international et la loi interne en Belgique à la suite de l'arrêt rendu le 27 mai 1971 par la Cour de cassation*, [1971] *Journal des Tribunaux* 529, 530.

8. S.A. Fromagerie Franco-Suisse "Le Ski" v. Etat Belge, [1970] *Journal des Tribunaux* 413 (Cour d'Appel, 2^{me} chambre, Belg. 1970).

9. See generally Pescatore, *Cour de Cassation (Belg.), 27 mai 1971, Etat belge c. S.A. "Fromagerie Franco-Suisse Le Ski"*, in 1971 *CAHIERS DES DROITS EUROPÉENS* 561, 572.

10. Rigaux, *Les conflits de la loi nationale avec les traités internationaux*, in *RAPPORTS BELGES AU VII^e CONGRÈS INTERNATIONAL DE DROIT COMPARÉ* 269, 274, 277 (Uppsala, 1966).

11. The French Constitution provides that "[t]reaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party." *CONSTITUTION* art. 55 (Fr. 1958). (In this Note all unattributed translations are the author's.)

The Constitution of The Netherlands provides that "[l]egislation in force within the Kingdom shall not apply if this application would be incompatible with treaties that according to their terms can be binding on anyone and that have been entered into either before or after the enactment of such legislation." *GRONDWET (Constitution)* art. 66 (Neth. 1956).

12. Rigaux, *supra* note 10, at 277.

13. *LA CONSTITUTION BELGE* art. 107 (Belg. 1831).

14. De Visscher, *Rapport de synthèse*, in *L'ADAPTATION DE LA CONSTITUTION BELGE AUX RÉALITÉS INTERNATIONALES* 95, 120 n.19 (1966).

since a treaty is deemed to be the equivalent of a law, when it comes into conflict with another domestic law the principle *lex posterior derogat legi priori*—the most recent provision in time prevails—should govern.¹⁵ Second, since the judiciary does not have the power to review the constitutionality of laws, a fortiori it cannot refuse to apply laws that are in conflict with treaty provisions, which are at best merely the equivalent of laws.¹⁶ Therefore, traditional doctrine suggests that any provision of a law enacted after a treaty takes effect should prevail over any contrary treaty provision.

In some cases the judiciary could avoid becoming an accomplice to the legislature's disregard of a treaty provision, even under the established doctrine. A Belgian court would attempt to construe a treaty and a subsequent domestic law in such a way as to avoid a conflict and give effect to both.¹⁷ The court presumes that the legislature did not intend to abrogate an international agreement. Where the purpose of the national law, however, was to modify the domestic effect of the treaty, the court could not explain the conflict away. The avoidance device was used by the appeals court in *Fromagerie* as a basis for its decision,¹⁸ but the Supreme Court explicitly found that the law and the treaty conflicted.¹⁹

Most authorities considered the established doctrine so ingrained that a constitutional amendment would be necessary to effect a change.²⁰ An amendment was proposed as far back as 1953, but it was rejected on the grounds that permitting the courts to deny the application of subsequent national laws that are incompatible with treaties would be letting judges "meddle in the affairs of the legislative and executive branches."²¹ Several other amendements have since been proposed, none of which has ever been submitted to a vote. All have died in a parliamentary committee, but not always because of what they proposed. One recent failure can be attributed to the linguistic dispute between the French and Flemish communities.²² Other amendments were perhaps too far-reaching in that

15. Rigaux, *supra* note 10, at 279.

16. See Masquelin, *L'action réciproque des traités et des lois*, 13 ANNALES DE DROIT ET DE SCIENCES POLITIQUES, No. 52, at 133, 150 (1953).

17. M. WAELBROECK, *supra* note 3, at 279. Cf. *Cook v. United States*, 288 U.S. 102, 120 (1933).

18. [1970] *Journal des Tribunaux* at 413.

19. [1971] *Journal des Tribunaux* at 474, 2 CCH COMM. MKT. REP. ¶ 8141, at 7620.

20. See M. WAELBROECK, *supra* note 3, at 276-77.

21. *Id.* at 271 n.142, quoting 1952-53 DOCUMENTS PARLEMENTAIRES, Chambre, No. 693, at 54-55.

22. De Visscher, *Les positions actuelles de la doctrine et de la jurisprudence belges à l'égard du conflit entre le traité et la loi*, in RECUEIL D'ÉTUDES DE DROIT INTERNATIONAL EN HOMMAGE À PAUL GUGGENHEIM 605, 607 (1968).

they included the larger notion of supremacy of "the general principles of international law."²³

In *Fromagerie* the Supreme Court held, without the aid of a constitutional amendment, that when the conflict is between a rule of domestic law and a rule of international treaty law that has direct effect within the domestic legal order, the latter rule must prevail. The effects of the law of March 19, 1968, were thus stayed in so far as the law was in conflict with a directly applicable provision of the EEC treaty. This holding raises at least two general questions: How did the Court deal with the traditional doctrine, and how far does this new principle of pre-eminence extend?

As for dealing with the traditional doctrine, the Court made no mention of precedent either in support of, or in opposition to, its decision. Although the prior doctrine was well settled, there was very little case law on the subject. The main authority was to be found in a 1925 Supreme Court decision concerning the Treaty of Versailles.²⁴ This case, however, had been interpreted narrowly. In 1963, Raoul Hayoit de Termicourt, Procureur Général près de la Cour de Cassation, had analyzed the pertinent language in the decision and concluded that the Court referred only to nonself-executing treaty provisions²⁵—in which case there would be no conflict. An examination of the Court's language supports Hayoit de Termicourt's interpretation: "It is the Belgian legislator's role, *when he enacts dispositions in execution of an international convention*, to judge the compliance of the rules which he adopts with the treaty obligations binding Belgium; the courts do not have the power to refuse to apply a law on the ground that it would not, supposedly, be consistent with *these obligations*."²⁶ A subsequent Supreme Court

23. For example, one proposal to amend article 107 of the Belgian Constitution provided that "[t]hey (the courts and tribunals) shall apply the laws only if they conform to the rules of general international law as well as to the rules established by or by virtue of treaties in effect and regularly published." De Visscher, *supra* note 14, at 120.

24. Schieble v. Procureur Général à Bruxelles et Campion, [1926] *Pasicrisie belge* I, 76 (Cour de Cassation, 1^{re} chambre, Belg. 1925).

25. Hayoit de Termicourt, *Le Conflit traité-loi interne*, [1963] *Journal des Tribunaux* 481, 483.

A nonself-executing treaty is one that is not intended to, and does not, take effect domestically until the legislature enacts enabling legislation. *Foster & Elam v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829):

Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the court.

26. Schieble v. Procureur Général à Bruxelles et Campion, [1926] *Pasicrisie belge* I, 76, 77 (Cour de Cassation, 1^{re} chambre, Belg. 1925) (emphasis added).

decision held that the nonself-executing provision of the Geneva Convention on the Rules of the Road of 1949 was superseded by a subsequent Belgian law because the Convention did not grant to citizens of the contracting nations any rights or obligations.²⁷ The implication is that the treaty might have prevailed had its provisions been self-executing—specifically, had its provisions granted rights to Belgian citizens. This reading lends support to Hayoit de Termicourt's view, which, incidently, has been accepted by many authorities.²⁸

In the absence of precedent, there remains the question of where the Court found the power to arrive at its decision in light of the concept of equivalence and in light of article 107 of the Belgian Constitution. In dealing with the concept of equivalence, the Court remarked that, even when consent to a treaty, required by article 68, paragraph 2, of the Constitution, is given in the form of a law, the legislature in enacting that law is not performing a legislative function.²⁹ One commentator has noted that when the Belgian Parliament approves a treaty, it is engaging in an act of political control.³⁰ The Court adopted the analysis of Ganshof van der Meersch, Procureur-général of the Court, who, in his statement to the Court,³¹ argued that, according to article 68 of the Constitution, treaties are the work of the executive branch of the government: "The King makes treaties." Parliament, he said, merely gives its consent to the treaty, thus allowing it to take effect within the country. The source of the rules of law embodied in the treaty is not the act of consent given by the legislature but the act of assent by the states as represented by members of their executive branches.³² In essence, the Court limited the concept of equivalence to its basic purpose—specifically, to give the courts jurisdiction over treaty-related problems. Since a treaty is not to be treated as a law for all purposes, the Court concluded that the conflict between a treaty and a subsequent national law can no longer be reduced to a conflict between two laws.³³ Consequently, the principle *lex posterior derogat legi priori* is not controlling.

Having thus dealt directly with the concept of equivalence, the Court did not address the question of its power under the Constitution to hold article 12 of the treaty superior to a subsequent national law. The Court seemed implicitly to deny the existence of any consti-

27. Ananou C. Defauw et Ploegaerts, [1964] *Pasicrisie belge* I, 849 (Cour de Cassation, 2^{me} chambre, Belg. 1964).

28. See de Visscher, *supra* note 14, at 120 n.5.

29. [1971] *Journal des Tribunaux* at 473, 2 CCH COMM. MKT. REP. ¶ 8141, at 7620.

30. Pescatore, *supra* note 9, at 579.

31. [1971] *Journal des Tribunaux* at 461-71.

32. [1971] *Journal des Tribunaux* at 463.

33. [1971] *Journal des Tribunaux* at 473, 2 CCH COMM. MKT. REP. ¶ 8141, at 7620.

tutional barriers to its decision. Paul de Visscher has pointed out that no constitutional provision required the courts to give effect to a law that was enacted in violation of a treaty.³⁴ Also, Ganshof van der Meersch reminded the Court that no express constitutional provision is necessary to give the Court the power it sought, since the Belgian constitutional system is not rigid, but is situated midway between a written and an unwritten system.³⁵ He also noted that no constitutional provision deals with the possible conflict between a treaty and a subsequent law.³⁶

Once this analysis had been accepted the conflict between treaty and national law could no longer be resolved by simply giving effect to the one later in time. The Court found the treaty superior because of "the very nature of international treaty law."³⁷ This is perhaps the most striking aspect of the Court's decision. What is the "very nature" of international treaty law that allows it to prevail over all national legislation?

Ganshof van der Meersch argued that it is the state's duty to make certain that its international commitments, the contracts it enters into with other states, are not violated by its own organs.³⁸ This duty falls upon the legislator as well as upon the judge since legislative decisions cannot relieve the state from these obligations.³⁹ A corollary to this duty is the superiority of the rule of international law, made by contract, over the rule of domestic law. The superiority of internal law would deny the jural existence of the international commitment. Van der Meersch concludes:

The submission of the State—and thus of its laws—to international law, in its interstate relations, finds its basis in the international legal order. This submission implies the preeminence of the rule of international law over the rule of internal law.

The superiority of the treaty is justified as an act expressing a rule of international law whose nature is contractual; the State which violates its obligations assumes responsibility in principle therefore.⁴⁰

Pierre Pescatore, in commenting on the *Fromagerie* decision,⁴¹ suggests that the international legal order has substance only if it

34. De Visscher, *supra* note 22, at 608-09.

35. [1971] *Journal des Tribunaux* at 465.

36. [1971] *Journal des Tribunaux* at 465.

37. [1971] *Journal des Tribunaux* at 474, 2 CCH COMM. MKT. REP. ¶ 8141, at 7620.

38. [1971] *Journal des Tribunaux* at 464. For an earlier development of this argument, see van der Meersch, *Réflexions sur le droit international et la révision de la Constitution*, [1968] *Journal des Tribunaux* 494.

39. Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, art. 27, 63 AM. J. INTL. L. 884 (1969), provides in part that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty"

40. [1971] *Journal des Tribunaux* at 464.

41. Pescatore, *supra* note 9, at 579.

transcends the internal legal order: Treaties can fulfill their role only if they prevail over the unilateral dispositions of states; otherwise, they are meaningless scraps of paper. Pescatore characterizes the problem as an existential one. Thus, the pre-eminence of international treaty law is inherent in the very existence of an international legal order, as well as in the contractual nature of the treaty.

The formation of a federal union in the United States provides a model of such a system of relationships. In becoming members of the union the individual states recognized the United States Constitution as the legal order under which they were united. This places them under a duty not to violate the Constitution's provisions. If they happen to enact laws that do violate some provision of the Constitution, the state courts must render the laws void. This is a logical and necessary extension of the Constitution. The Belgian Supreme Court believed that Belgium, as a member of the community of nations, recognizes a certain international legal order—even if only established by treaty—as the legal order under which it functions with other nations.

In deciding *Fromagerie*, the Belgian Court may have been encouraged by a decision of the Supreme Court of Luxembourg in a similar situation. The Luxembourg court found that a treaty approved by legislative act is a law of superior essence, which has a source higher than the will of a domestic organ and consequently prevails over any subsequent domestic legislation.⁴²

It is important to note that, although the Court based the *Fromagerie* decision upon the inherent nature of all treaties, the conflict before the Court concerned an article of the treaty creating the EEC. One of the principal characteristics of the EEC treaty is that it instituted a new legal order that resulted in a transfer of powers from the states to the Community and restricted the sovereign rights of the member states.⁴³ The nature of this treaty particularly lends itself to the conclusion that its provisions are superior to subsequent national laws. However, the Court did not limit the application of the principle of pre-eminence to the EEC treaty. It reasoned that the principle should be applied because the Community law is treaty law:

Whereas, where the conflict is between a rule of internal law and a rule of international law that has direct effects in the internal legal system, the rule established by the treaty must prevail; the pre-eminence of the treaty results from the very nature of international treaty law;

42. *Chambre des Metiers v. Pagani*, 16 *Pasicrisie luxembourgeoise* 150 (Cour supérieure de Justice, cassation criminelle, Lux. 1954).

43. *Costa v. E.N.E.L.*, 10 *Recueil* 1141, [1961-1966 Court Decisions Transfer Binder] CCH COMM. MKT. REP. ¶ 8023 (Ct. of Justice of the European Communities 1964).

Whereas, this is so *a fortiori* where the conflict is, as in this case, between a rule of internal law and a rule of Community law⁴⁴

Jean Salmon, commenting on *Fromagerie*, reflected that to protect the EEC treaty but not a treaty with the United States or Japan would not be logically tenable,⁴⁵ for this approach would ignore the position of the state—and of the EEC itself—in an international context that is just as vital as the Community context. He concluded that it is the international treaty obligation as such that is accorded pre-eminence, irrespective of the subject matter of that obligation or of the identity of the contracting parties.

A consequence of relying upon the nature of all international treaties is that no distinction is made as to whether the conflict between the treaty and the national law was deliberately created by the legislature.⁴⁶ It will be recalled that Belgian judges traditionally attempted to construe away any conflict by assuming that the legislature had not intended to violate the treaty; however, when such an assumption could not be made, the subsequent national law prevailed. In the future a Belgian judge will be obliged to give effect to the treaty, any contrary legislative intent notwithstanding. Once the superiority of the rule of international treaty law is deemed to reside in its very essence, it would be logically inconsistent to allow the legislature to deny that superiority whenever it wishes. That would be like saying that the Constitution of the United States is the supreme law of the land unless a state legislature says otherwise.

This does not signify that Belgium is irretrievably bound by the provisions of its treaties. A nation that desires to escape from its treaty obligations may do so by denouncing the treaty in accordance with the terms of the treaty or accepted principles of international law. But it must take those steps permitted by international law and not unilateral internal acts that would be the negation of international law.⁴⁷

As far-reaching as the principle of pre-eminence now appears to be, the Court did limit it in some respects. For example, the Court spoke only of "international treaty law" and not of "international law." Pescatore is of the view that it would be unwise to interpret this apparent limitation as an argument against the supremacy of nontreaty international law and, notably, of international custom.⁴⁸ If the constitutions of some of Belgium's neighboring countries are

44. [1971] *Journal des Tribunaux* at 473-74, 2 CCH COMM. MKT. REP. ¶ 8141, at 7620 (CCH trans.).

45. Salmon, *supra* note 7, at 533.

46. *Id.* at 534.

47. See Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, arts. 39-72, 63 AM. J. INTL. L. 887 (1969).

48. Pescatore, *supra* note 9, at 582.

an indication of a trend, Pescatore may be correct, for they expressly incorporate the principle of the supremacy of international law.⁴⁹ Henri Rolin suggests that disregard of general principles of international law, like disregard of international treaty law, renders a state internationally answerable.⁵⁰ Furthermore, he argues, Belgium has consented to international judicial control over its compliance with both treaties and international law,⁵¹ the only reservation being that local remedies be exhausted first. It follows that local judicial control over the compliance of internal laws with the general principles of international law should be given the same scope as control over the compliance of internal laws with treaties. Several of the proposed amendments to the Belgian Constitution were not as limited as the Court's decision, but referred to the supremacy of "general rules of international law."⁵² It must be remembered, however, that these proposed amendments were never enacted. Ganshof van der Meersch, who was influential in their defeat, considered the amendments to be overly broad; he thought that the term "general rules of international law" was vague and might leave too much discretion in the judges.⁵³

A far greater restraint is to be found in the Court's statement that only a "rule of international law having direct effect within the domestic legal order" prevails over a subsequent provision of domestic law.⁵⁴ The scope of this limitation is uncertain, even with regard to the determination of whether a rule of international treaty law has such a direct effect. The precise amount of discretion left to the national judges is an open question⁵⁵—although, with respect to EEC treaty provisions, the question of the existence of direct applicability

49. The basic law of the Federal Republic of Germany provides that "[t]he general rules of public international law form part of the Federal law. They take precedence over the laws and directly create rights and duties for the inhabitants of the Federal Territory." GRUNDGESETZ, art. 25 (W. Ger., 1949). The Italian Constitution states that "[t]he Italian legal system conforms to the generally recognized principles of international law. The legal status of foreigners is governed by law in conformity with international rules and treaties . . ." CONSTITUZIONE, art. 10 (Italy, 1948).

50. Rolin, *Révision de la Constitution Art. 107 bis*, Document de Travail No. 3, 7 REVUE BELGE DE DROIT INTERNATIONAL 777, 785 (1971).

51. *Id.* at 786-87.

52. See note 23 *supra*.

53. Van der Meersch, [1968] Journal des Tribunaux 494, *supra* note 38, at 496.

54. [1971] Journal des Tribunaux at 473, 2 CCH COMM. MKT. REP. ¶ 8141, at 7620.

55. For example, the Supreme Court of The Netherlands chose to construe narrowly the concept of direct applicability in *Institut national des appellations d'origine des vins et eaux de vie v. J. Mettes*, [1958] Nederlandse Jurisprudentie 968 (1956), noted in Erades, *Self-Executing Nature of the Netherlands-French Commercial Treaty of 1935*, 6 NETH. INTL. L. REV. 399 (1959). For a critical discussion of this decision, see Van Panhuys, *The Netherlands Constitution and International Law*, 58 AM. J. INTL. L. 88, 101-02 (1964).

is finally decided by the European Court of Justice.⁵⁶ The Belgian Court used neither the term "self-executing treaty provision" nor the expression suggested by Ganshof van der Meersch—"directly applicable rule of international law."⁵⁷ It has been suggested that this represents a desire to break away from the narrowness of the former concept and adopt the concept adhered to by the European Court of Justice.⁵⁸ In a case dealing with article 12 of the EEC treaty the European Court decided that the article produced "direct effects" on the legal relationship between the member states and their citizens.⁵⁹ It so held despite the fact that article 12 is directed at the member states themselves and requires them to refrain from engaging in certain acts. Although that article does not expressly confer any rights upon individuals, the European Court found that it did so by implication. The Court went on to state that

Community law, which is independent of the laws of the Member States, while it creates obligations for individuals, also gives rise to rights which become part of their legal heritage. These rights are created, not only when they are explicitly stated by the Treaty, but also through obligations which the Treaty lays down in a very definite manner for individuals as well as for the Member States and the Community institutions.⁶⁰

The final limit placed on the principle of pre-eminence concerns the effect of the treaty's superiority over internal law. The Court held that "the effects of the law of March 19, 1968, were [stayed] inasmuch as this law was in conflict with a directly applicable provision of international treaty law."⁶¹ Thus, the Court simply refused to apply the law; it did not annul it. Should the treaty cease to be in effect, it appears that the law of March 19, 1968, would then be applied.

The decision in *Fromagerie* came at a most opportune time. Conflicts between treaties and domestic laws are certain to become more

56. See Treaty Establishing the European Economic Community, done March 25, 1957, art. 164, 298 U.N.T.S. 73.

57. [1971] *Journal des Tribunaux* at 465.

58. Salmon, *supra* note 7, at 533.

59. N.V. Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Fiscal Administration, 9 *Requeil* 1, [1961-1966 Court Decisions Transfer Binder] CCH COMM. MKT. REP. ¶ 8008 (Ct. of Justice of the European Communities 1963).

60. N.V. Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Fiscal Administration, 9 *Requeil* 1, 23, [1961-1966 Court Decisions Transfer Binder] CCH COMM. MKT. REP. ¶ 8008, at 7214 (Ct. of Justice of the European Communities 1963).

61. [1971] *Journal des Tribunaux* at 474, 2 CCH COMM. MKT. REP. ¶ 8141, at 7620 (CCH trans.). The CCH translation is "terminated" rather than "stayed." However, the French word "arrêté" is closer to "stayed" or "suspended."

numerous as a result of the development of the EEC and the growth of the network of international treaties. The Belgian Supreme Court's decision has greatly enlarged the possibilities for recourse to local courts for enforcement of treaties by private parties whom such agreements were intended to benefit.
